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Testimony of Sharon Wicks Dornfeld
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House Bill 5661 ***An Act Concerning Court Interviews in Child Custody Cases***
Select Committee on Children
February 22, 2011

Representative Urban and members of the Committee, I have the honor to serve as Vice Chair of the Family Law Section of the Connecticut Bar Association. I also happen to limit my practice to representing children in abuse, neglect and high conflict custody matters as the children's attorney or as their guardian *ad litem.*

I appear before you today on behalf of the Family Law Section to urge you **not to recommend passage** of House Bill 5661. Our Section's Executive Committee voted unanimously to oppose this bill because of concerns about the constitutionality of the bill and the potential damaging effects on the children involved in their parents' custody cases.

In approximately 98% of custody cases, the parents are able to reach an agreement on the custody and visitation arrangements which will best serve their children. Some parents do it alone, or with the help of their attorneys, some do it with a mediator, some need some help from our Family Relations Division and/or an attorney or guardian *ad litem* for their kids. But they reach an agreement. And that's as it should be–parents **should** make those decisions. In most of those cases, the only time the parents ever appear before a judge is to have their agreement approved by the Court and entered as a final judgment.

Approximately 2% of cases, however, fall into the category of "high conflict" custody cases. Those are the cases in which, despite numerous efforts to help the parents reach an agreement, a judge will ultimately have to decide which parent will have custody, and where the children will live, and how much time the other parent will spend with the children. High conflict cases are the ugly ones, the ones we hear about, and the ones which most damage the children.

The language of this bill would apply primarily–if not exclusively–to those 2% of the cases. In the other 98%, there simply would never be a reason or an opportunity for a judge to take any evidence on custody or visitation. There would never be an opportunity–or a reason--for a judge to interview a child, because the judge won't have to make those decisions.

So this bill would apply to the children caught in the middle of the worst conflicts. Psychologists knowledgeable about child development and the effects of divorce on children unanimously agree that it is detrimental to children to be involved in the conflict between their parents. The goal is to protect the children from the conflict, and to promote the best, most secure relationship possible between the children and both parents, one that will weather the stresses of the custody battle and strengthen in the future. The language of this bill would insert the children into the process and have the opposite effect.

Without reciting the research, ascertaining the actual wishes of a child is a difficult task for even

trained therapists. Children vary in their ability to understand the consequences of various decisions, lack life experience, are–and often should be–without a complete understanding of all of the facts and circumstances of the case, use language and experience time differently than adults, and are particularly susceptible to manipulation by the people closest to them. The value to the Court of a single interview by a judge--an absolute stranger–is, at best, questionable. The potential harm to the child is considerable. Even a well-intentioned parent may find it impossible to resist the temptation to influence, bribe, or manipulate the child into expressing a preference for that parent. Even a child largely sheltered from the conflict will feel a tremendous burden not to hurt or anger the parent not preferred, or even fear being abandoned by that parent.

Where children wish to express a preference–and some do–there are already numerous opportunities for children to be heard in every high conflict case. Perhaps too many. Family Relations counselors, a psychological evaluator, the children's own attorney and/or guardian ad litem, or some combination, will all interview the children in high conflict cases. All of them are ethically obliged to report a child's expressed preferences to the Court.

Where children might not wish to express a preference, this bill makes a judge's interview of a child 12 or over mandatory if anyone involved in the case asks for it. There is no "opt out" provision for the child if he or she does not wish to speak with the judge. There is no preliminary assessment of whether such an interview might subject the child to parental pressure or emotional harm–even trauma.

Surely it is not the policy of this state to burden a child in this way.

And, finally, we are very concerned that the language of this bill is unconstitutional. In 1984, our Appellate Court decided a case known as Gennarini v. Gennarini which overturned a trial court judge who had interviewed a child in chambers under circumstances similar to the language proposed. It concluded that, "in the absence of the consent of the parties...it is a violation of due process of law for the trial court to interview a minor child in the absence of the parties and their counsel." Gennarini v. Gennarini, 2 Conn. App. 132, 134-5 (1984).

This bill's language does not include "parent" as a person who might be permitted to be present for the interview. I presume that omission is intentional, in an attempt to protect the child from manipulation or embarrassment. However, in more than 80% of family cases, one or both parties are representing themselves, acting *pro se*. This raises further questions about the bill's practicality. .

My colleagues and I also believe that this bill is unnecessary. The Gennarini decision already specifies a procedure for a judge to interview a child if necessary or desirable under all the circumstances of the case, and spells out the necessary procedural safeguards to comply with requirements of constitutional due process.

While the motive to give children an opportunity to be heard directly by the judge deciding their future is laudable, the practical considerations, we believe, make the proposed language unworkable. We would urge the Committee to **reject** this bill. I would be pleased to answer any questions you may have.